



04 FEB 2008

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In re Application of
SMALLEY et al.
Application No.: 10/575,352
PCT No.: PCT/US04/34002
Int. Filing Date: 14 October 2004
Priority Date: 14 October 2003
Attorney Docket No.: 11321P077WOUS
For: AMPLIFICATION OF CARBON
NANOTUBES VIA SEEDED-GROWTH
METHODS

DECISION ON
PAPERS UNDER 37 CFR 1.42

This decision is issued in response to applicants' "Renewed Submission under 37 CFR 1.42" filed 26 October 2007. Additionally, this decision is issued in response to applicants' facsimile submission dated 31 January 2008. No petition fee is required.

BACKGROUND

On 14 October 2004, applicants filed the above-identified international application which claimed a priority date of 14 October 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 14 April 2006.

On 11 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 19 April 2007, applicants filed a declaration executed by twelve of the thirteen inventors and Irene M. Marek, on behalf of deceased inventor, Richard E. Smalley. In a decision dated 11 June 2007, applicants' request under 37 CFR 1.42 was refused.

On 13 August 2007, applicants filed a "Renewed Submission under 37 CFR 1.42." In a decision dated 07 September 2007, applicants' request under 37 CFR 1.42 was refused.

On 26 October 2007, applicants filed a (second) "Renewed Submission under 37 CFR 1.42."

On 31 January 2008, applicants filed a supplemental "Renewed Submission under 37 CFR 1.42."

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

A. *Declaration filed 26 October 2007*

The declaration filed 26 October 2007 is executed by twelve of the thirteen inventors and Irene M. Marek as the "legal representative" of the deceased inventor, Richard E. Smalley. The declaration submitted on 26 October 2007 appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration is not in an acceptable form. Specifically, the declaration is defective, in that, it fails to include page one of six; it fails to include the residence, citizenship, and post office address for the legal representative; and it gives the impression that Irene M. Marek is the first inventor for the present application.

B. *Declaration filed 31 January 2008*

The declaration filed 31 January 2008 is executed by twelve of the thirteen inventors and Irene M. Marek as the "legal representative" of the deceased inventor, Richard E. Smalley and provides their residence, post office address and country of citizenship. In addition, the declaration provides the country of citizenship of the deceased inventor. The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b).

CONCLUSION

The papers filed under 37 CFR 1.42 are ACCEPTED.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.



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